No. 95-1441

Supreme Court, U.S.
FILED
OCT 11 1996
CLERK

IN THE
Supreme Court of the United States
OCTOBER TERM, 1996

LINDA J. BLESSING, Director, Arizona Department of Economic Security, in her official capacity,
Petitioner,

v.

CATHY FREESTONE, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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BRIEF OF *AMICI CURIAE* NATIONAL WOMEN'S LAW CENTER NOW LEGAL DEFENSE AND EDUCATION FUND WOMEN'S LEGAL DEFENSE FUND

(Additional *Amici* Listed Inside Cover)

IN SUPPORT OF RESPONDENT

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INTEREST OF THE *AMICI*

Amici curiae are organizations strongly committed to ensuring that the fundamental human needs of low-income persons, especially women and children, are met. Each of the *amici* has a strong interest in achieving state compliance with the requirements of the federal-state child support enforcement program contained in Title IV-D of the Social Security Act, 42 U.S.C. § 651 *et seq.* Descriptions of the individual organizations are set forth in the attached appendix.

Petitioner and respondent have consented to the filing of this brief pursuant to Rule 37.3 of the Rules of this Court.[1]

SUMMARY OF ARGUMENT

Title IV-D of the Social Security Act, 42 U.S.C. § 651 *et seq.*, is a cooperative federal-state program, enacted pursuant to Congress' spending power, in which the federal government provides significant funds to participating States for use in establishing paternity, and establishing, enforcing, and modifying child support orders. The legislative history of Title IV-D discussed *infra* is crucially significant to the question whether Title IV-D creates rights that are enforceable against the States under 42 U.S.C. § 1983.

The goals behind Title IV-D have enjoyed near-universal support over the last twenty years, namely: to assure that the States do more to ensure that paternity is established for children born out of wedlock and that child support is secured for children deprived of parental support. Congress has demonstrated its strong commitment to these goals by acting time after time to strengthen Title IV-D. Since Congress first mandated that States provide child support and paternity establishment services in return for federal funds, Congress has monitored the States' actions, and when Congress has found that the States were not doing enough, it has passed new

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[1] The letters of consent are being filed separately.

legislation strengthening Title IV-D and imposing additional obligations on the States.

Nowhere is Congress' commitment to Title IV-D more clearly demonstrated than in the most recent revision to the Social Security Act, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 ("Reconciliation Act"), Pub. L. No. 104-193, 110 Stat. 2105 (to be codified in various sections of 42 U.S.C.). In that statute, Congress enacted sweeping changes to social welfare programs, replacing Title IV-A of the Social Security Act (which provided for Aid to Families with Dependent Children ("AFDC")) to give the States more flexibility to structure their own welfare systems. At the same time that Congress *decreased* the States' obligations to provide the welfare services previously required under Title IV-A, Congress considerably *increased* the States' obligations to provide paternity and child support services under Title IV-D. The Reconciliation Act's special treatment of the child support program in contrast to other welfare programs dramatically illustrates Congress' continued commitment to Title IV-D and its emphasis on requiring States to provide specific child support and paternity services.[2]

Congress' repeated actions over the last two decades demonstrate that Title IV-D creates enforceable rights under 42 U.S.C. § 1983. The statute and legislative history confirm that Congress intended to benefit children and custodial parents deprived of parental support. The statute and legislative history, moreover, show that Congress repeatedly imposed binding obligations on the States to provide specific paternity and child support services. Finally, this history clearly distinguishes this case from those in which this Court has found that statutes do not create rights enforceable under § 1983.

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[2] The provisions of the Reconciliation Act are relevant because the case involves prospective relief. *Fusari v. Steinberg*, 419 U.S. 379, 387 (1975). We point out in the text or footnotes when the provisions of the Reconcilation Act are not yet in effect.

ARGUMENT

I. THE LEGISLATIVE HISTORY DEMONSTRATES THAT TITLE IV-D CREATES RIGHTS ENFORCEABLE UNDER 42 U.S.C. § 1983

A statute creates rights enforceable under 42 U.S.C. § 1983 if: (1) "the provision in question was intended to benefit the putative plaintiff"; (2) the statute imposes "binding obligations on the governmental unit" rather than "reflects merely a 'congressional preference' for a certain kind of conduct"; and (3) the interest asserted is not "too vague and amorphous such that it is beyond the competence of the judiciary to enforce." *Wilder v. Virginia Hosp. Ass'n*, 496 U.S. 498, 509 (1990) (quotations and brackets omitted); *see also Golden State Transit Corp. v. City of Los Angeles*, 493 U.S. 103, 106 (1989); *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 19 (1981).[3] This analysis involves a review of the "entire legislative enactment," *Suter v. Artist M.*, 503 U.S. 347, 357 (1992); "the provisions of the whole law, and . . . its object and policy," *Pennhurst*, 451 U.S. at 18 (quotation omitted); and a review of the relevant legislative history, *see Wilder*, 496 U.S. at 509; *Wright v. City of Roanoke Redev. & Hous. Auth.*, 479 U.S. 418, 425-27 (1987); *Pennhurst*, 451 U.S. at 20-24, 26-27; *see also Suter*, 503 U.S. at 362. As explained below, the history of Title IV-D provides clear evidence that all the elements of this test are met, and that Title IV-D therefore creates rights enforceable under § 1983.

A. Children and Custodial Parents Deprived of Support Are the Intended Beneficiaries of Title IV-D

Title IV-D is unambiguously phrased in terms to benefit children and parents deprived of support from a noncustodial parent. *See Wilder*, 496 U.S. at 510. Title IV-D was passed:

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[3] This brief does not address the final part of the *Wilder* test, namely whether the statute precludes enforcement under 42 U.S.C. § 1983.

> [f]or the purpose of enforcing the support obligations owed by absent parents *to their children and the spouse (or former spouse) with whom such children are living*, locating absent parents, establishing paternity, obtaining child and spousal support, and assuring that assistance in obtaining support will be available under this part to *all children* (whether or not eligible for aid under part A . . .) for whom such assistance is requested . . . .

42 U.S.C. § 651 (emphasis added). The statutory provisions demonstrate an intent to benefit children and custodial parents. *See, e.g.*, 42 U.S.C. § 654(4) (as amended by Pub. L. No. 104-193, § 301) (State must provide "services relating to the establishment of paternity or the establishment, modification, or enforcement of child support obligations" with respect to "each child" receiving assistance and "any other child, if an individual applies for such services"); 42 U.S.C. § 657 (as amended by Pub. L. No. 104-193, § 302) (rules for distribution of collections to families).

Congress' intent to benefit children and custodial parents, moreover, is evident in the legislative history of the statute. From the time Title IV-D was enacted in 1975, there has been a clear focus on vindicating the rights of *children* deprived of parental support. *See* S. Rep. No. 93-1356, at 42 (1974) ("The Committee believes that all children have the right to receive support from their fathers . . . including the right to have their fathers identified so that support can be obtained."); *id.* at 52 ("[T]he committee acknowledges that the legislation must recognize the interest primarily at stake in the paternity action to be that of the child."). As Senator Nunn eloquently stated within a few months after the enactment of Title IV-D:

> [T]he child support bill . . . represents a bill of rights for children—the right of every child to have some identity, the right of every child to have paternity established in a fair and efficient manner, and the right of every child to support from his natural parents. In essence, the primary beneficiaries are the children.

121 Cong. Rec. 26541 (1975).

This focus expanded to include custodial *parents* as well as children when Congress amended Title IV-D in 1984 to require States to enforce spousal support orders for custodial parents. 42 U.S.C. § 654(4)(B) (amended by Pub. L. No. 104-193, § 301). In addition, Congress' intent to benefit *all* families deprived of support was reinforced in 1984 when, among other things, Congress reiterated the requirement that services be provided to all families, including non-AFDC recipients. *Id.* § 651.[4] Similar sentiments were expressed in passing the 1988 amendments to Title IV-D,[5] and the Reconciliation Act. Indeed, in the statute enacted this year, Congress emphasized that it was retaining Title IV-D—despite a total revamping of other welfare programs—to protect children and parents:

> For more than two decades, the Federal Government has played a leading role in requiring States to establish and conduct strong child support enforcement programs. The fundamental goal of these programs . . . is to increase the financial security of children who live with one parent. This goal enjoys

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[4] *See* S. Rep. No. 98-387, at 1 (1984) ("[The 1984 amendments are intended to ensure] that all children . . . will receive assistance regardless of their circumstances."); 130 Cong. Rec. 9843 (1984) (Senator Dole, then Chairman, Senate Finance Committee) ("This bill . . . will help strengthen [the Federal-State] partnership for the good of all children."); 130 Cong. Rec. 9844-45 (1984) (Senator Armstrong) ("It is crucial that we enact this legislation quickly to prevent further suffering of [custodial parents] and the 2 million children who may be added to this list each year.").

[5] *See* 133 Cong. Rec. 35843 (1987) (Rep. Staggers) (amendments are "an essential rescue measure for the millions of children who have been thrust into or have been born into poverty through no fault of their own"); 133 Cong. Rec. 35874 (1987) (Rep. Pease) ("mandating immediate wage withholding . . . is another good idea that puts Congress on the side of the rights of children to support from their parents").

> nearly universal support among members of Congress and among the American public.

H.R. Rep. No. 104-651, at 1440 (1996).[6]

Congressional action confirms that these sentiments were not empty rhetoric because time after time Congress has taken specific action to address problems faced by families deprived of parental and spousal support. *See* Part B, *infra*. For example, over the years Congress has mandated in ever increasing detail that States adopt specific procedures for wage withholding to assist custodial parents obtain support. *See* pp. 12-13, 15, 19, *infra*. These provisions clearly are intended to benefit families such as plaintiff Freestone's, whose efforts to receive child support have been stymied by the father's frequent job changes and the State's failure to provide the required services. Congress also has mandated that States have in effect laws ensuring that voluntary acknowledgments of paternity (like the one which occurred in the case of plaintiff Judith Rogers) can be used as a basis to obtain support orders. *See* pp. 18-19 & n.19, *infra*. Finally, when Congress was apprised of the difficulties of interstate enforcement of support orders, as described in *amicus* American Public Welfare Association's ("APWA") brief at 12, Congress mandated new procedures for every State to follow in interstate cases. *See* pp. 19-21, *infra*. These specific actions reaffirm Congress' commitment to benefitting the women and children represented in the plaintiff class here.

Although Petitioner concedes that families are the intended beneficiaries of Title IV-D, Petitioner's Brief ("Pet. Brief") at 13, several *amici* argue that recapturing the cost of welfare is the sole goal of Title IV-D. That argu-

[6] *See also* 142 Cong. Rec. S8524 (daily ed. July 23, 1996) (Senator Rockefeller) ("[s]trengthening child support enforcement will truly help children of all income levels"); 142 Cong. Rec. H9407 (daily ed. July 31, 1996) (Rep. Johnson) (failure to collect child support payments "is catastrophic for women and children, and this bill fixes that system, an enormous advantage for women and children and a way off welfare").

ment ignores the fact that, since 1975, Congress has mandated that Title IV-D services be available to all families, including non-AFDC families, and that when some States ignored that requirement, Congress vehemently reiterated the requirement in 1984.[7] Moreover, the argument sidesteps the many enactments and reams of legislative history cited herein evincing Congress' intention to broadly protect children and parents deprived of support. Although fiscal conservation clearly is a benefit flowing from Title IV-D, Congress has made clear that Title IV-D serves more important societal goals:

> The immediate result [of Title IV-D] will be a lower welfare cost to the taxpayer but, more importantly, as an effective support collection system is established fathers will be deterred from deserting their families to welfare and children will be spared the effects of family breakup.

S. Rep. No. 93-1356, at 42 (1974); *see* H.R. Rep. No. 100-159, prt. 1, at 73 (1987) ("The Committee wishes to emphasize the importance of paternity establishment and intends for these provisions to encourage paternity establishments even in cases where child support cannot be immediately collected.").[8]

[7] *See* H.R. Rep. No. 98-527, at 29 (1983) ("[T]he Committee is emphasizing its intention that [HHS] and the states vigorously implement a requirement that has been in the law since 1975. . . . Notwithstanding law and legislative history, some states have not enforced child support obligations as energetically for non-AFDC families as they have for AFDC families, and in a few states . . . services appear to be available only for families receiving AFDC benefits.")

[8] *See also* H.R. Rep. No. 98-527, at 29-30 (1983) (The success of Title IV-D cannot be measured "in terms of AFDC savings due to collections on behalf of recipients. . . . The Committee recognizes the larger societal responsibility for making sure that all children receive financial support. . . . The objectives behind the program are greater than merely recouping federal and state AFDC expenditures.")

B. Title IV-D Imposes Very Specific Binding Obligations on the States in Exchange for Federal Funds

A statute enacted pursuant to the spending power creates rights enforceable under § 1983 when it "unambiguously" imposes clear and "binding" obligations on the States in return for acceptance of federal money. *Pennhurst*, 451 U.S. at 19; *see Suter*, 503 U.S. at 360; *Wilder*, 496 U.S. at 510. Such statutes allow the States to exercise their choice to accept federal funds "knowingly, cognizant of the consequences of their participation." *Pennhurst*, 451 U.S. at 19.

The history of Title IV-D leaves no doubt that Congress "unambiguously" imposed clear, binding obligations on the States. From its inception, Title IV-D has contained mandatory, rather than hortatory, language informing the States of their obligations as recipients of substantial federal funds.[9] The statute also contains specific direction to the States as to the scope of their obligations. *See Wilder*, 496 U.S. at 512. Furthermore, in reaction to lax enforcement efforts by the States, Congress has reemphasized, refined, and supplemented these obligations.

This history, moreover, distinguishes Title IV-D from the statutes at issue in *Pennhurst* and *Suter*. In *Pennhurst*,

[9] Since 1975, the federal government consistently has paid the States at least two thirds of the costs of their Title IV-D programs. From 1975 to 1982, the federal government provided 75% of the money spent by States on paternity establishment and child support enforcement. *See* Social Services Amendments of 1974, Pub. L. No. 93-647, § 101, 1974 U.S.C.A.A.N. (88 Stat. 2337) 2716, 2732; Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. No. 97-248, § 174, 1982 U.S.C.A.A.N. (96 Stat.) 324, 403. In subsequent years, the ratio has increased for some services (up to 90%) and decreased for others (down to 66%). The federal government now matches 90% of expenditures for certain laboratory tests and implementation of certain computer systems and 66% of other expenses. 42 U.S.C. § 655(a) (as amended by Pub. L. No. 104-193, § 344(b)).

In addition, Title IV-D contains a financial incentive program to reward States "which perform in a cost-effective and efficient manner to secure support for all children who have sought assistance in securing support." 42 U.S.C. § 658(a).

this Court determined that section 6010 of the Social Security Act merely "express[ed] a congressional preference" for a certain type of treatment, 451 U.S. at 19, because the provisions of section 6010 were "hortatory, not mandatory," and Congress did not provide the States with funds to accomplish the purported goal of section 6010. 451 U.S. at 23. In *Suter*, the Court determined that the Adoption Assistance Act requiring States to use "reasonable efforts" to prevent the removal of children from their homes and destruction of families did not create enforceable rights because "[n]o . . . statutory guidance is found as to how 'reasonable efforts' are to be measured." 503 U.S. at 360. By contrast, in Title IV-D, Congress provided mandatory direction to the States as to their obligations to provide paternity and child support services and provided significant funds for that purpose.

1. The Enactment of Title IV-D. The driving force behind the enactment of Title IV-D was Congress' recognition that children and custodial parents need assistance in obtaining child support services (including paternity determination) and that the States were not providing adequate assistance.[10] The Senate Finance Committee noted that "most States ha[d] not implemented in any meaningful way the provisions of [prior] law relating to the enforcement of child support and establishment of paternity," S. Rep. No. 93-1356, at 46 (1974), and that "[t]he enforcement of child support obligations is not an area of jurisprudence about which this country can be proud." *Id.* at 43. To remedy this problem, Congress enacted

[10] Previous federal enactments in 1950 and 1967 had not been effective. Legislation enacted in 1950 had required state welfare agents to give notice to law enforcement officials of all children receiving welfare who were not receiving child support from absent parents. Social Security Act Amendments of 1950, Pub. L. No. 81-734, § 321, 64 Stat. 477, 549-50. When this proved ineffective, Congress in 1967 required States to establish paternity and secure child support for all children receiving assistance under the Aid to Families with Dependent Children program. Social Security Amendments of 1967, Pub. L. No. 90-248, § 201(a), 81 Stat. 821, 877.

Title IV-D, the purpose of which is clear from the opening section, where Congress made available federal monies "[f]or the purpose of enforcing the support obligations owed by absent parents to their children, locating absent parents, establishing paternity, and obtaining child support." Social Services Amendments of 1974, Pub. L. No. 93-647, § 101, 1974 U.S.C.A.A.N. (88 Stat. 2337) 2716, 2732 (codified as amended at 42 U.S.C. § 651).

Because Congress envisioned that the States would bear the "basic responsibility for child support and establishment of paternity," S. Rep. No. 93-1356, at 46 (1974), Title IV-D mandated that States take specific, affirmative steps to establish paternity and enforce child support. In explicit mandatory language,[11] States were required to adopt a State plan for providing paternity establishment and child support enforcement services, and to designate a special organizational unit for that purpose. 42 U.S.C. § 654 (amended by Pub. L. No. 104-193, § 301). In the State plan, the States had to agree to (1) "undertake . . . to establish the paternity" of any child born out of wedlock who receives AFDC; (2) "secure support" for any child receiving AFDC; and (3) make "child support collection and paternity determination services . . . available" to non-AFDC families. In addition, the State agency was required to establish a service to locate absent parents and to enter into cooperative arrangements with other States to establish and enforce child support obligations. *Id.* Finally, States were required to comply with regulations promulgated by the Department of Health, Education and Welfare ("HEW"). *Id.*

[11] *See, e.g.*, Pub. L. No. 93-647, § 101(a) (as amended by Pub. L. No. 104-193, § 301) ("[a] State plan for child support *must* [include listed provisions and] *shall* be in effect in all political subdivisions"; "child support collection or paternity determination services established under the plan *shall* be made available [to non-AFDC families]"; "amounts collected as child support *shall* be distributed as provided in section 457"; any payment "required to be made under section 456 or 457 to a family *shall* be made to the resident parent, legal guardian, or caretaker relative") (emphasis added).

This enactment created the basic structure of Title IV-D that exists today. Although Congress has amended it and added to it, Congress has never changed the essential structure of the program, or the essential nature of the States' obligations.

2. The Child Support Enforcement Amendments of 1984. Despite the specific mandates established in 1975, Congress in 1984 found it necessary to pass bipartisan legislation[12] strengthening Title IV-D in reaction to a recognition that the States' existing child support enforcement programs continued to be ineffective. The legislative history of the 1984 Act is marked by forceful expressions of the need to "put some teeth" into Title IV-D's requirements. *See, e.g.*, 130 Cong. Rec. 23039 (1984) (Rep. Rostenkowski). Congress specifically added a "Sense of Congress" section to the 1984 enactment, stating that,

> there is a critical lack of child support enforcement, which Congress has undertaken to address through the child support enforcement program; [and] Congress is strengthening that program to recognize the needs of all children.

Child Support Enforcement Amendments of 1984, Pub. L. No. 98-378, § 23, 1984 U.S.C.A.A.N. (98 Stat.) 1305, 1329. This perspective is also evident in the pronouncements of leading members of Congress with responsibility for drafting the legislation:

> Currently, there are wide variations in the effectiveness of the State programs. For example, if we look at families receiving welfare payments . . . six States account for 88 percent of all support collected but spend only 32 percent of the total administrative funds. . . . Clearly, the State programs must be reformed—to do a better job of collecting the support that is owed to children and to reduce their administrative overhead.

[12] The bill *unanimously* passed both Houses. *See* 130 Cong. Rec. 21776, 21783-84, 23048 (1984).

130 Cong. Rec. 9841-42 (1984) (Senator Dole, then Chairman of the Senate Finance Committee).[13]

Congress strengthened Title IV-D by requiring States to provide *spousal* support enforcement services in connection with child support services (previously, provision of spousal support enforcement services was left to the discretion of the State), 42 U.S.C. § 654(4)(B) (amended by Pub. L. No. 104-193, § 301). Moreover, the States, for the first time, were required to adopt state guidelines for determining the amount of child support awards, 42 U.S.C. § 667(a), to provide annual notification to individuals for whom support payments are collected of the amount collected, 42 U.S.C. § 654(5)(A), and to publicize the availability of child support enforcement services, 42 U.S.C. § 654(23).

But Congress did not stop there. Congress added "teeth" to Title IV-D by requiring "each State [to] have in effect *laws requiring the use of the following procedures* . . . to increase the effectiveness of the program which the State administers under this part," 42 U.S.C. § 666(a) (emphasis added): [14]

- mandatory income withholding in the case of child support arrearages;
- expedited processes for obtaining and enforcing child support orders and establishing paternity;
- state income tax refund offsets in the amount of any overdue support;

[13] *See also* 130 Cong. Rec. 9850 (1984) (Sen. Bradley) ("There is a wide disparity in performance among States . . . . The system is in major need of tightening up."); 129 Cong. Rec. 33039 (1983) (Rep. Schroeder) ("The performance of State child support enforcement programs has been spotty. . . . Because of the variation in performance it has become necessary to enact additional legislation to strengthen the child support enforcement effort.").

[14] The States could avoid having these laws only by "demonstrat-[ing] to the satisfaction of the Secretary"—using "data pertaining to caseloads, processing times, administrative costs, and average support collections"—that the required law would "not increase the effectiveness and efficiency of the State child support enforcement program." 42 U.S.C. § 666(d).

- liens against real and personal property for amounts of overdue support;
- a statute of limitations permitting paternity actions until at least the child's eighteenth birthday;
- posting of a bond or security by the absent parent to guarantee payment of overdue support;
- reporting of information on overdue support to credit agencies.

42 U.S.C. § 666(a) (amended by Pub. L. No. 104-193, §§ 314, 325, 367, 368 (to be codified at 42 U.S.C. § 666(a)).[15] For a limited number of the enumerated procedures (state tax refund intercept, liens, bonds or security, information to credit agencies), States were given the discretion to determine whether or not to use them in a specific case pursuant to guidelines which had to be "generally available within the State." 42 U.S.C. § 666(a).

3. The Family Support Act of 1988. In 1988,[16] Congress passed additional bipartisan legislation to further strengthen Title IV-D in response to identified concerns

[15] Congress even provided detailed specifications which the state laws must meet. For example, Congress dictated that wage withholding procedures, among other things, "*must* provide" that (1) income withholding be used when an absent parent falls one month or more behind in support; (2) withholding be provided "without the necessity of any application" or "further action"; (3) withholding procedures include specific procedural requirements; (4) "amounts withheld . . . be expeditiously distributed"; and that (5) employers be held liable "for any amount which such employer fails to withhold from wages due an employee following . . . proper notice", and be fined if the employer "discharges from employment, refuses to employ, or takes disciplinary action against any absent parent subject to wage withholding." 42 U.S.C. § 666(b)(1), (2), (4)(A), (5), (6)(C) (amended by Pub.L. No. 104-193, § 314) (emphasis added).

[16] In the Omnibus Budget Reconcilation Act of 1986, Congress prohibited States from allowing retroactive modification of child support orders. 42 U.S.C. § 666(a)(1). Congress was seeking to "prevent . . . the purposeful noncompliance by the noncustodial parent because of his hope that his child support obligation will be retroactively forgiven." S. Rep. No. 99-348, at 155 (1986).

that States were not doing enough to establish paternity and enforce child support. The House concluded that the States' track record in establishing paternity had been particularly bad:

> The Child Support Enforcement Amendments of 1984 have contributed to improving this situation but more remains to be done. Paternity establishments—the first step in the child support enforcement process—must be increased and more effective techniques must be found for establishing and enforcing support orders.

H.R. Rep. No. 100-159, prt. 1, at 40 (1987). The Senate noted serious problems with child support enforcement efforts by the States:

> One of the major elements in the Committee bill is a series of amendments to strengthen the child support enforcement program. The problem of nonsupport of children by their parents has become a serious one for this country. . . . Census Bureau data tell us that of the 8.8 million mothers with children whose fathers were not living in the home in the spring of 1986, 3.4 million, or nearly 40 percent of these mothers, had never been awarded support for their children. Fewer than one in five of mothers who had never been married had been awarded support. Of those who had been awarded and were due support in 1986, only half received the full amount they were due.

S. Rep. No. 100-377, at 8 (1988).[17]

The 1988 Act imposed additional requirements on the States to provide more effective child support and paternity services. Congress directed the Secretary to promulgate forthwith regulations regarding the time limits for a State to respond to requests for services from an applicant or another State, 42 U.S.C. § 652(h), and regulations establishing time limits for the State to distribute amounts collected to recipients. *Id.* § 652(i). These regulations, which were promulgated in August 1989, lay out in great detail what is required of the States. *See* 45 C.F.R. §§ 302.32(f), 303.2, 303.3, 303.4.[18]

Congress also refined some of the States' existing obligations. For example, States were required to adopt procedures that would *mandate* wage withholding for all support orders, 42 U.S.C. §§ 666(a)(1), (a)(8)(B), (b)(3) (amended by Pub. L. No. 104-193, § 314), whereas prior to 1988, wage withholding was required only in cases of arrearage, *see* p. 12, *supra*. In addition, States were required to adopt child support guidelines that are presumptively binding in state child support proceedings, 42 U.S.C. § 667(b)(2), and that are reviewed and updated every four years, *id.* § 667(a). (Prior to 1988, child support guidelines were not binding and there was no provision for updating them, *see* p. 12, *supra*.)

Congress also imposed new conditions mandating States to have in effect laws or procedures (1) for automatic review and adjustment of child support orders every three

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[17] *See also* H.R. Rep. No. 100-159, prt. 1, at 40 (1987) ("the track record on support payments by non-custodial parents is poor"); 134 Cong. Rec. 14248 (1988) (Senator Bentsen) ("The Congress enacted strong legislation in 1975 and 1984, but despite that legislation only a small fraction of children who live with single parents receive the full credit as awarded to them by the courts. Many receive nothing at all. The welfare reform bill before the Senate will help to remedy that situation. It will require the States to do a better job of establishing paternity.")

[18] For example, payments to families must be made within 15 calendar days of the end of the month in which the support is received. 45 C.F.R. §§ 302.32(f)(2), 302.32(f)(3). *See id.* (amounts collected by responding State in interstate case must be paid to collecting State within 15 days); *see also* 45 C.F.R. § 303.3(b)(3) (listing actions State IV-D agency must take to locate absent parents and requiring action within 75 days); *id.* § 303.4(d) (requiring State IV-D agency to at least begin to establish a support order within 90 days after locating absent parent); *id.* § 303.8(c), (e) (parents must be notified of right to review and adjustment of support order every 36 months; State IV-D agency must, within 15 days of receiving request for review or adjustment of support award, determine whether review is warranted).

years, 42 U.S.C. § 666(a)(10) (amended by Pub. L. No. 104-193, § 351); (2) requiring that the child and parties submit to genetic testing at the request of a party in a contested paternity case, 42 U.S.C. § 666(a)(5) (amended by Pub. L. No. 104-193, § 331); and (3) requiring that each parent furnish his or her social security number to the state agency administering birth certificates, 42 U.S.C. § 405(c).

4. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996. After some intervening amendments,[19] this year Congress enacted "the toughest child support laws ever passed by Congress," 142 Cong. Rec. S9396 (daily ed. Aug. 1, 1996) (Senator Pressler), as part of welfare legislation. Congress' treatment of Title IV-D in the Reconciliation Act of 1996 differs significantly from its treatment of other core welfare programs. Congress repealed all of Title IV-A containing AFDC and replaced it with a system of block grants designed to "increase the flexibility of States in operating a program designed to provide assistance to needy families." H.R. Conf. Rep. No. 104-725, at 264 (1996). Congress also explicitly limited the federal government's authority to pass regulations concerning the block grants. *See* Pub. L. No. 104-193, § 103 (to be codified at 42 U.S.C. § 617). Finally, Congress provided explicitly that the block grant system "shall not be interpreted to entitle any individual or family to assistance under any State program funded under [part A of the Act.]" Pub. L. No. 104-193, § 103(a) (to be codified at 42 U.S.C. § 601(b)).

In stark contrast, Congress retained the essential structure of Title IV-D. The House Committee Report explains:

[19] For example, in 1993, Congress required States to adopt procedures to simplify paternity establishment in both uncontested and contested cases. 42 U.S.C. § 666(a)(5) (amended by Pub. L. No. 104-193, § 331). Among other things, the 1993 amendments required the States to adopt a simple process for voluntary acknowledgment of paternity, including procedures by which the voluntary acknowledgment of paternity can form the basis for entry of a support order. *Id.*

> [A] major objective of the block grant approach followed by the committee is to reduce Federal rules and regulations. However, the committee felt that several provisions . . . should be retained. Thus, the committee proposal continues the current law requirements ensuring that States operate a child support enforcement program and a child protection program.

H.R. Rep. No. 104-651, at 1331 (1996). Unlike the amendments to Title IV-A, Congress did not limit the federal government's authority to pass regulations concerning Title IV-D. Nor did Congress include any statement that Title IV-D creates no entitlement to paternity and child support services.[20] The fact that Congress knew how to eliminate an entitlement (and in fact did so with respect to Title IV-A), but chose not to do so with respect to Title IV-D, provides critical evidence that Congress intended Title IV-D to continue to create enforceable rights.

Indeed, there was tremendous bipartisan support in Congress for fortifying Title IV-D.[21] The 1996 Congress

[20] An earlier welfare bill, H.R. 4, "The Personal Responsibility Act of 1995," introduced in the House on January 4, 1995, included a statement that there is no entitlement to Title IV-D services:

> Notwithstanding any other provision of law . . . , all entitlement of individuals to benefits established under the following programs . . . is terminated:
>
> (1) FAMILY SUPPORT.—The program of aid and services to needy families with children under part A of title IV of the Social Security Act, *the child support enforcement program under part D of such title* . . . .

H.R. 4, § 302, 104th Cong. (1995) (emphasis added). The provision eliminating any entitlement to Title IV-D services was dropped by the time the House Ways and Means Committee reported the bill to the House, *see* H.R. Rep. No. 104-81, at 13 (1995), and such a provision has not appeared in any legislation passed by either House of Congress.

[21] *See* 142 Cong. Rec. E1453 (daily ed. Aug. 1, 1996) (Rep. Morella) ("We will soon be able to finally crack down on deadbeat dads by enacting penalties with real teeth and establishing Federal registries to help track deadbeats."); 142 Cong. Rec. H9421 (daily ed. July 31, 1996) (Rep. Franks) ("The bill strengthens child support enforcement so that absent fathers will be located and required to pay child support.").

was concerned especially with the States' poor performance in establishing paternity:

> [P]aternity establishment is one of the major weaknesses of the current child support system. A significant fraction, perhaps as many as half, of the children on the [AFDC] program do not have paternity established. Obviously, until paternity is established, child support enforcement cannot even begin. Thus, the committee proposal includes a host of provisions that will result in improved paternity establishment performance by States.

H.R. Rep. No. 104-651, at 1418 (1996). Similar concerns were expressed about the States' efforts at interstate enforcement of support orders:

> The committee has received extensive information through letters and testimony that the current system of pursuing child support across States lines is far too sluggish to be effective. Here and elsewhere in the proposal, the committee takes strong and innovative action to repair a system that is universally regarded as broken. Data from the Federal Office of Child Support Enforcement show that whereas 30 percent of child support cases are interstate cases, only 10 percent of collections are from interstate cases.

Id. at 1405.[22] Congress believed that the new law would provide the States with additional tools to improve paternity and child support services. *See, e.g.*, 142 Cong. Rec. S9381 (daily ed. Aug. 1, 1996) (Senator DeWine) (the new statute gives "States added tools in their effort to track down the bank accounts of deadbeat dads").

Building on existing law requiring States to simplify procedures for voluntary acknowledgment of paternity and to adopt specific procedures for that purpose, *see* n.19, *supra*, Congress added to the list of procedures States must

[22] *See also* 142 Cong. Rec. H7759 (daily ed. July 17, 1996) (Rep. Roukema) ("The core of these child support enforcement reforms is the absolute requirement for interstate enforcement of child support, because the current, State-based system is only as good as its weakest link.").

have in effect a requirement that States have voluntary acknowledgment programs based in birth record agencies as well as hospitals. Pub. L. No. 104-193, § 331 (to be codified at 42 U.S.C. § 666(a)(5)). Moreover, States must provide notice "orally and in writing" to both parents about the consequences of providing a voluntary acknowledgment of paternity, and then the States must have procedures in place to ensure that a signed voluntary acknowledgment of paternity is considered a *legal finding* of paternity, subject to some conditions, that does not need to be ratified in court proceedings. *Id.* Likewise, Congress added to the list of procedures that the States must use to establish paternity in general. *See id.* (requiring the admissibility of genetic tests under listed conditions, without the need for foundation testimony or other proof of authenticity; creating a rebuttable presumption of paternity upon genetic testing results indicating threshold positive findings; eliminating the right to jury trial in paternity cases; and ensuring that putative fathers have a reasonable chance to initiate paternity actions).

With respect to enforcement of child support orders, Congress also imposed new obligations, including the requirement that the State provide notice of all proceedings as well as a copy of any orders to the parties. Pub. L. No. 104-193, § 304 (to be codified at 42 U.S.C. § 654(12)). The State must also establish and operate, by October 1998, a State Disbursement Unit "for the collection and disbursement of payments under support orders" and distribute any amounts payable under 42 U.S.C. § 657 within *two* business days after receipt. Pub. L. No. 104-193, § 312 (to be codified at 42 U.S.C. § 654B(a)).

The statute also requires the State agency to create two computerized databases—a "State Case Registry" and a "State Directory of New Hires"—and provides specific requirements about their contents and use. For example, the "State Case Registry" must contain specific information about each case handled by the State IV-D agency (*e.g.*, names of parents, birth date of child, status of case,

and the amount of periodic support due, the amount owed, collected, and distributed, and the amount of any arrearage). *Id.* § 311 (to be codified at 42 U.S.C. § 654A(e)). The "State Directory of New Hires" (which must be in place and operating by October 1, 1997) must contain information from every employer in the State with identifying information about every newly hired employee. The employers must provide this information within an allotted time (at most twenty days) and in an approved format. Further, the statute requires the States to (1) enter information received from employers into the database within *five* business days; (2) furnish the information to the newly created "National Directory of New Hires" within *three* business days after entry into the State system; (3) by May 1998 make automated comparisons of the social security numbers in the State Directory of New Hires and the State IV-D Case Registry; and (4) provide any matching information to the State IV-D agency. After the State IV-D agency receives the matching information, it must transmit a withholding notice to the employer within *two* business days. *Id.* § 313 (to be codified at 42 U.S.C. § 653A).

Congress also worked to address enforcement problems raised specifically by interstate cases. Some existing requirements such as income withholding are changed to make them easier in interstate cases, *see* Pub. L. No. 104-193, § 314 (to be codified at 42 U.S.C. § 666(a)(1)) (providing uniform definition of "income" for use in interstate cases); and States are required to have in effect various laws designed to ease interstate enforcement, *see id.* § 321 (to be codified at 42 U.S.C. § 666(f)) (Uniform Interstate Family Support Act must be in effect by January 1998); *id.* § 364 (to be codified at 42 U.S.C. § 666(g)) (laws relating to voiding fraudulent transfers). Congress also mandated that the State IV-D agency respond to interstate requests to enforce a support order within *five* business days and adopt procedures to ensure easier enforcement of out-of-state orders. *Id.* § 323 (to be codified at 42 U.S.C. § 666(a)(14)).

In addition, Congress required States to have in effect specific new procedures for use in all enforcement cases (including interstate cases) such as procedures:

- requiring that applicants for licenses—professional, commercial, and drivers—provide social security numbers;
- authorizing the States to revoke licenses in the case of past due support payments;
- requiring the State IV-D agency to enter into agreements with private financial institutions to develop and operate a system for identifying the assets of noncustodial parents; and
- ensuring that child support orders include health coverage, and that, where the noncustodial parent changes jobs, the State IV-D agency sends a notice of coverage to the new employer.

Id. §§ 317, 369, 372, 382 (to be codified at 42 U.S.C. § 666(a)). Moreover, because Congress concluded that "[c]umbersome court procedures have been a major impediment to the efficient operation of child support systems," H.R. Rep. No. 104-651, at 1415 (1996), the new statute specifies that the State IV-D agency must be able to use the following expedited procedures "without the necessity of obtaining an order from any other judicial or administrative tribunal," Pub. L. No. 104-193, § 325 (to be codified at 42 U.S.C. § 666(a)): (1) ordering genetic testing; (2) subpoenaing financial or other information; (3) obtaining access to governmental records (vital statistics, real estate, tax records, corporate ownership records); (4) obtaining access to certain private records (such as public utility records, cable television records, and financial institution records); (5) increasing automatically monthly payments to collect arrearages; and (6) securing assets by intercepting payments from state agencies, judgments, settlements, and lotteries, attaching assets held in a bank, and imposing liens.

* * * *

This review of the history of Title IV-D reveals two compelling features that make this statute vastly different from the statutes previously considered by this Court in *Suter* and *Pennhurst*: the mandatory nature of the requirements repeatedly imposed by Congress directly on the States[23] and the detail and specificity with which Congress repeatedly spoke. This history demonstrates conclusively that Congress has spoken "with a clear voice" "set[ting] forth a congressional command." *Wilder*, 496 U.S. at 512. The States, thus, for more than 20 years have been able to make an "informed choice" to accept federal funds. *Pennhurst*, 451 U.S. at 25.

C. The Obligations Imposed by Title IV-D Are Binding and Judicially Enforceable

In the face of this overwhelming evidence that Congress imposed mandatory binding obligations with increasing specificity over time, Petitioner and *amici* argue that these obligations are not binding or judicially enforceable because the statute and regulations require only "substantial compliance" with the provisions of Title IV-D.

[23] There can be no doubt that the States understood these requirements to be binding on them. The requirements highlighted above all contained clear, mandatory language. *See* n.11, *supra*; *see also* 42 U.S.C. § 666 (States "must have in effect" certain procedures); *id.* § 667(b) ("there shall be a rebuttable presumption" that the guidelines provide the appropriate amount of support); *id.* § 405(c)(2)(c)(ii) (state agency responsible for birth certificates must include parents' social security numbers in certificate). Congress was very clear when, by contrast, the States retained discretion about what to do. For example, in 1988, Congress clearly encouraged States to implement procedures simplifying paternity procedures. *See* Family Support Act of 1988, Pub. L. No. 100-485, § 111(d), 1988 U.S.C.C.A.N. (102 Stat.) 2350 ("each State is *encouraged* to establish and implement a simple civil process for voluntarily acknowledging paternity") (emphasis added). (In 1993, those requirements became mandatory, *see* n.19, *supra*, and in 1996, they became more specific, *see* p. 19, *supra*.) In addition, the 1996 statute gives the States the option to pass laws requiring grandparents to be liable for the support of children of minor parents. Pub. L. No. 104-193, § 373 (to be codified at 42 U.S.C. § 666(a)).

According to Petitioner, this standard requires only "compliance in at least 75% of the cases reviewed." Pet. Brief at 14. This argument is without merit.

First, Petitioner and *amici* argue that the "substantial compliance" language of 42 U.S.C. § 602(a)(27) renders the obligations of Title IV-D either non-binding, or judicially unenforceable. Pet. Brief at 14-15. But the language in § 602(a)(27) on which Petitioner hangs her entire argument *is no longer part of the statute.* Indeed, 42 U.S.C. § 602(a)(27) was repealed by § 103(a) of the Reconciliation Act. It was replaced by a section that requires, as a condition of receiving funds under Title IV-A, a "certification by the chief executive officer of the State that, during the fiscal year, the State will operate a child support enforcement program under the State plan approved under part D." Pub. L. No. 104-193, § 103(a) (to be codified at 42 U.S.C. § 602(a)(2)).[24]

The only place that "substantial compliance" is found in Title IV-D is in 42 U.S.C. § 652(g)(1), which provides the substantive standard for the Secretary to use during an audit in assessing the States' efforts at paternity establishment.[25] It is also found in Title IV-A in 42

[24] In the original enactment of Title IV-D, 42 U.S.C. § 602(a)(27) did not include "substantial compliance" language. To the contrary, it required the States, as a condition of receiving Title IV-A funds, to "have in effect a plan approved under [Title IV-D] and operate a child support program in conformity with such plan." Pub. L. No. 93-647, § 101(c)(1)(5) (codified as amended at 42 U.S.C. § 602(a)(27), *repealed by* Pub. L. No. 104-193, § 103). The section was amended as follows in 1984 to include "substantial compliance" language: in order to receive Title IV-A funds, the State must have "in effect a plan under part D of the subchapter and operate . . . a child support program in *substantial compliance* with such plan." 42 U.S.C. § 602(a)(27), *repealed by* Pub. L. No. 104-193, § 103 (emphasis added). As noted, that section is replaced in the Reconciliation Act by a new provision deleting the substantial compliance language. The new provision is effective July 1997, or earlier if a State submits a Title IV-A plan before then. Pub. L. No. 104-193, § 116.

[25] That section states, in relevant part: "A State program under this part shall be found for the purposes of [the audit provisions]

U.S.C. § 603(h) (and its successor, new section 409 (a)(8) of the Social Security Act (to be codified at 42 U.S.C. § 609(a)(8)))[26] which provides a penalty the Secretary may impose as a result of adverse audit findings of the State's child support programs. Neither provision, by its terms, limits the States' obligation to provide paternity and child support services in the first instance. To the contrary, both provisions simply provide the standard against which the State will be measured to avoid the imposition of the financial penalty assessed against Title IV-A funds by the Secretary.

Second, the legislative history of Title IV-D refutes Petitioner's argument. The compelling evidence of Congress' continued strengthening of Title IV-D in response to lax enforcement by the States, *see* Part B, *supra*, clearly is inconsistent with the position advanced by Petitioner that the statute allows a State to disregard a portion of its caseload.

Third, the legislative history of the "substantial compliance" language in the statute and the regulations also refutes Petitioner's argument. When first enacted in 1975, Title IV-D required the Secretary to perform *annual* audits to determine whether the State had "an effective program meeting the requirements of section [602(a)(27)]." Pub. L. No. 93-647, § 101(c)(6)(A) (codified as amended at 42 U.S.C. § 603(h), *repealed by* Pub. L. No. 104-193, § 103). If a State was found not to have "an effective program," an automatic penalty was imposed—the State's

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not to have complied substantially with the requirements of this part" unless the State's paternity establishment percentage reaches a certain level. 42 U.S.C. § 652(g)(1) (amended by Pub. L. No. 104-193, § 341).

[26] 42 U.S.C. § 603(h) provides that "if a State's program operated under part D . . . is found as a result of a review conducted under [42 U.S.C. § 652(a)(4)] not to have complied substantially with the requirements of such part" the Secretary must reduce the State's Title IV-A funds by a certain percentage, unless the State adopts a corrective program. This section is replaced by a similar provision to be codified at 42 U.S.C. § 609(a)(8). Pub. L. No. 104-193, § 103. The new provision is not yet effective. *Id.* § 116.

Title IV-A money was reduced by five percent. *Id.* From the beginning, however, HEW expressed concern about the harshness of such an automatic penalty and the fact that it would impact the intended beneficiaries of the funds. *See* 41 Fed. Reg. 55,345, 55,346 (1976) ("The Department recognizes that this unfortunate result is a possible consequence should the statutorily required penalty be imposed."). Indeed, in 1980, the Department of Health and Human Services ("HHS") balked at having to apply the automatic sanction to States under the audit standards, and proposed regulations which included a "substantial compliance" test for auditing purposes. The purpose of the proposed "substantial compliance" test was to give HHS "greater discretion in the application of the penalty, so that States which operate effective programs but are nonetheless technically out of compliance with one or more requirements will not automatically be subject to penalty." 45 Fed. Reg. 69,495, 69,495 (1980). These proposed regulations were never adopted.

Instead, Congress enacted the Child Support Enforcement Amendments of 1984, which, as explained above, were intended to significantly strengthen—not weaken, as propounded by Petitioner—the requirements imposed on the States. *See* pp. 11-13, *supra*. At the same time, Congress amended the auditing provisions in Title IV-A (42 U.S.C. § 603(h)) to include a "substantial compliance" requirement, *see* n.26, *supra*. Congress also changed to *triennial* audits and altered the auditing standard to avoid imposition of harsh financial penalties against States whose noncompliance was only of a technical nature. *See* H.R. Rep. No. 98-527, at 44 (1983) (noting that current penalty "has never been applied . . . because of its severity in relation of the nature of non-compliance . . . . In place of the 5 percent penalty provision, the bill provides for a graduated penalty system with correction periods for programs found to be out of compliance with Title IV-D requirements."); S. Rep. No. 98-387, at 33 (1984) ("Unlike present law, which requires a penalty in every case where the audit discloses any area of non-compliance, [the new statute allows] the

penalty to be waived if the Administrator finds that the noncompliance is not substantial and has no significant adverse impact on the effectiveness of the State's program.")

Contrary to Petitioner's argument, this new auditing standard did not alter the States' obligations to comply in all cases with the terms of Title IV-D. Congress was explicit in its understanding of the constancy of the requirements before and after the 1984 amendments:

> Title IV-D presently requires that an annual audit be made of State child support enforcement programs to determine their *compliance with all statutory requirements* . . . .
>
> The bill requires that each State's program [now] be reviewed not less frequently than every 3 years. The Committee believes that it is not cost effective to conduct annual audits of programs which have had consistently excellent records of performances. Administrative resources could be better used for more detailed and frequent scrutiny of programs which appear to be having difficulty *in achieving full compliance*.

H.R. Rep. No. 98-527, at 44 (1983) (emphasis added). Indeed, Congress explained that the new auditing provisions, which would be based on performance standards determined by HHS, would provide "minimum acceptable levels" of success required of the States. S. Rep. No. 98-387, at 32-33 (1984). Congress specifically rejected the argument Petitioner advances now—that the new standard relieved the States of an obligation to provide services in *all* cases:

> The Committee does not intend that its endorsement of performance standards should be seen as sanctioning a simple short-term cost-effectiveness approach which would discourage States from serving clients with more difficult and costly problems or from devoting resources to such elements as paternity determination which may involve high initial costs.

S. Rep. No. 98-387, at 32-33 (1984).

Likewise, since 1984, HHS has taken the position that the substantial compliance standard does not limit the States' obligations to meet the requirements of Title IV-D. Soon after the enactment of the 1984 amendments, HHS promulgated regulations implementing the new auditing standards. *See* 50 Fed. Reg. 40,120 (1985) (final regulations); 49 Fed. Reg. 39,489 (1984) (proposed regulations). Contemporaneously with those regulations, HHS promulgated *other* regulations clearly indicating that States are required to comply with the substantive requirements of Title IV-D in *all* cases.[27]

For example, in May 1984, HHS published rules for case assessment and prioritization, but emphasized that, although prioritization is a tool for a more effective program, States must meet Title IV-D requirements in all cases:

> Since we believe that all cases should receive some level of effort to achieve the desired program goal, we want to ensure that these regulations are not construed to imply that it would be permissible for States to neglect or exclude certain cases or classes of cases.

49 Fed. Reg. 36,773, 36,773 (1984); *see also id.* ("If a State adopts a case prioritization system, the State must continue to meet the requirements in Part 302 which include performing all of the functions of the program, that is locating the absent parent, establishing paternity and establishing and enforcing support obligations for AFDC and non-AFDC cases."); *id.* at 36,775 (States "may *not*

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[27] Before the 1984 amendments, HHS had made clear that the scope of the audit regulations did not determine the States' obligations to comply with Title IV-D. Specifically, in 1982, HHS promulgated regulations limiting the auditing function to a review of statutorily-mandated requirements. HHS eliminated audits of requirements mandated only by the regulations. HHS emphasized that this change did not alter the requirement that States comply with all regulations. *See* 47 Fed. Reg. 24,716, 24,717 (1982) (fact that HHS would not audit to enforce provision requiring safeguarding of information "does not alter the long standing Federal requirement that information be safeguarded").

orient their programs entirely toward financial output by focusing solely on the amount of support or dollar amount that may be obtained in each case. . . . This could result in the State IV-D agency failing to comply with the requirements of its IV-D State plan in the sense that certain functions of the program, such as paternity establishment, might be ignored.")

In addition, in promulgating other regulations to implement the 1984 legislation, HHS rejected requests from the States for flexibility in using some of the statutorily mandated procedures. For example, with respect to wage withholding, HHS stated:

> [The States] urged that the regulation be more flexible in this area, giving the State an option as to whether or not to implement withholding in these cases. . . .
>
> The statute is very clear that withholding must be used in *all* cases being enforced under the State plan when the absent parent fails to make payments equal to the support payable for one month. We cannot, therefore, give States this type of flexibility.

50 Fed. Reg. 19,608, 19,623 (1985) (emphasis added); *see also id.* ("The intent of the statute is to provide an administrative enforcement remedy which is equally available in all cases"); *id.* at 19,624 (rejecting request for more time to implement wage withholding "in all existing cases by October 1, 1985" because it "will entail a major effort" because the effective date is specified in the statute). The passage of these regulations contemporaneously with HHS' implementation of the "substantial compliance" standard for audits demonstrates that HHS saw no conflict between its statements that States must comply with the requirements of Title IV-D in *all* cases and the use of a substantial compliance standard for purposes of assessing a financial penalty.

HHS has adhered to the policy that the "substantial compliance" standard for auditing does not limit the States' obligations to comply with Title IV-D. *See* 54 Fed. Reg. 32,280, 32,290 (1989) (rejecting States' request for flexibility in the percentage of cases that would

be handled in any given three month period; "a standard based on the percentage of actions taken out of the total actions needed to be taken is not a measure of prompt response to requests for services"). Indeed, in the most recent regulations streamlining the auditing procedure, HHS emphasized that the changes did not limit the States' obligation to comply with Title IV-D requirements:

> While *program* regulations specify how States must operate IV-D programs to be in compliance with State plan requirements and what program expenditures may qualify for Federal funding, *audit* regulations specify those requirements which must be met in order for a State to be determined to be in substantial compliance with the requirements of title IV-D of the Act and to avoid fiscal penalties.
> . . .
>
> *We emphasize that States are required to meet all Federal requirements contained in program regulations, whether or not the requirements are included under § 305.20* [*the audit regulations*]
> . . .
>
> States still must meet the requirements of each specific regulation cited.

59 Fed. Reg. 66,204, 66,212 (1994) (emphasis added). These audit regulations provide the clearest statement by the agency that audit regulations are distinct from the more specific and wider ranging requirements of the statute.

The "substantial compliance" language in the auditing scheme, therefore, does not limit the nature or scope of the States' obligations to provide paternity or child support services. Rather, the auditing provisions provide the standard against which the Secretary will judge the States in determining whether to impose a financial penalty against the State's Title IV-A funds. Contrary to Petitioner's argument, the "substantial compliance" language does not in any way make the rights created by Title IV-D

less binding on the States or less enforceable by the judiciary.

* * * *

The legislative history recited above demonstrates clearly that Title IV-D creates rights enforceable under § 1983 because the statute was intended to benefit children and parents deprived of support and the statute imposes binding obligations on the States that are sufficiently specific and definite to be enforceable. This review also demonstrates the fallacy of the arguments advanced by Petitioner and *amicus* APWA that Respondents seek to have this Court usurp the legislative and executive functions by enforcing the terms of Title IV-D against the States.[28] Congress has repeatedly spoken about the need to improve paternity and child support services, and has clearly told the States what is expected of them. Respondents simply want Petitioner to live up to the bargain she made as a condition of accepting money from the federal government.

CONCLUSION

For the reasons stated above, *amici curiae* respectfully request that the Ninth Circuit's decision be affirmed.

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[28] *See* Pet. Brief at 19 ("If Respondents want to increase the amount of resources devoted to child support enforcement . . . they have a more appropriate forum than the courts."); APWA Brief at 20 ("The decision of whether services should be expanded, maintained or cut altogether should be made by the executive branch and by Congress.")

Respectfully submitted,

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APPENDIX

APPENDIX

American Association of University Women

The American Association of University Women (AAUW) has over 160,000 members in 50 states and is dedicated to promoting education and equity for women and girls. Assuring state compliance with the requirements of the federal-state child support enforcement program is consistent with AAUW's commitment to fair and equitable treatment, especially for women, in all federal programs.

American Jewish Congress Commission for Women's Equality

The American Jewish Congress Commission for Women's Equality (Commission) is an activist leadership group of Jewish men and women committed to vigorously pursue full and equal rights for women within a Jewish context. One of the Commission's principal goals over the years has been strengthening the Jewish family as well as the families of all Americans. The Commission believes that permitting suits in the courts against states to enforce child support services is important in achieving that end.

Americans for Democratic Action, Inc.

Americans for Democratic Action (ADA) is a nonpartisan organization founded in 1947. ADA's members are citizens from every state in the nation, working in sustained political and legislative action to help formulate and achieve significant social change through government action.

California Women's Law Center

The California Women's Law Center (CWLC) is a private, non-profit, public interest law center specializing in the civil rights of women and girls. CWLC was estab-

lished in 1989 to address the comprehensive rights of women and girls in the following priority areas: sex discrimination, reproductive rights and health care, family law, violence against women, and child care.

Center on Social Welfare Policy and Law

The Center on Social Welfare Policy and Law (Center) works to promote fair administration of income support programs that meet fundamental human needs of low-income persons. Since poor people's access to the courts is essential to achievement of that goal, the Center has represented low-income persons seeking to enforce federally created rights in the Aid to Families with Dependent Children (ADFC) program. The Center's *amicus curiae* brief in *King v. Smith*, 392 U.S. 309 (1968), presented the statutory claim upon which the Supreme Court relied in confirming the legal entitlement of ADFC. In *Rosado v. Wyman*, 397 U.S. 397 (1970), a Center case, the right to enforce federal AFDC plan requirements was upheld. Now that Congress has repealed the AFDC program and reduced income support funding, meaningful access to the courts to assure state compliance with child support enforcement plan requirements is critical to the low-income families the Center serves.

Coalition of Labor Union Women

Founded in 1974, the Coalition of Labor Union Women (CLUW) is a national association of over 20,000 union members that advances the benefits of organized workplaces for women and promotes women's leadership development within the labor movement. CLUW is also an advocacy organization, working on behalf of millions of American working women to promote affirmative action, leadership, health care reform, pay equity, child care options, and reproductive health. CLUW supports social and economic justice for working women.

Federally Employed Women, Inc.

Federally Employed Women, Inc. (FEW), is an international non-profit membership organization representing over one million civilian and military women employed by the federal government. Since its inception in 1968, FEW has focused on two primary goals: to eliminate sex discrimination and sexual harassment and to enhance career opportunities for women in government. FEW supports full enforcement of child support payments that are awarded by the courts as part of its efforts to ensure economic empowerment for women and their families.

Gray Panthers

The Gray Panthers work in areas of multigenerational concern to eliminate injustices, discrimination, and oppression based on age, sex, race, ethnicity and religion, sexual or political preference. Seeking to build a socially responsible society and heighten opportunities for all people to reach their full potential, the Gray Panthers work independently and in coalition with other groups to achieve both short term social and economic changes and ultimately a democratic society that serves human needs.

Greater Upstate Law Project, Inc.

The Greater Upstate Law Project, Inc. (GULP), is a not-for-profit, public interest law center that focuses on legal issues affecting low-income individuals and families throughout New York state. In addition to a direct counsel role, GULP provides litigation assistance in a variety of substantive areas, including on issues of welfare, disability, housing, and family law. GULP staff also advocate on the state and national levels on statutory and regulatory issues that affect the poor. In the area of family law, GULP concentrates generally on child support, domestic violence and custody issues. In particular, GULP attorneys have litigated several issues involving the federal-state child support enforcement program, including the

right to receive the $50.00 pass-through, and to receive proper collection and distribution of child support payments. GULP believes that if litigants are no longer able to pursue claims against state child support agencies to ensure that those agencies adhere to statutory and constitutional directives, large numbers of custodial parents will suffer.

Harriet Buhai Center for Family Law

The Harriet Buhai Center for Family Law (Center) is the largest provider of pro bono family law/domestic violence assistance for low-income parents in Los Angeles. Annually the Center assists nearly one thousand persons, the majority of whom are single-parent, female-head-of-household parents who do not receive child support for their childen from the other parent. The Project focuses on individual, legislative, and public policy advocacy to improve the collection of child support for low-income residents of Los Angeles County. The Center believes that individually initiated lawsuits sanctioned under Section 1983 are the best hope to compel accountability in a program which, over nearly a decade of observation and effort, has failed to provide the basic services it is funded to provide.

Jewish Women International

Jewish Women International (JWI) was founded in 1897 as B'nai B'rith Women by a group of Jewish women who sought to improve the quality of life for women in their communities. Now an organization of over 50,000 women in the United States and Canda, JWI continues to speak out on issues that affect women—in their communities, families, and in society. JWI believes that custodial parents are entitled to enforcement services to ensure the receipt of child support.

Mississippi Human Services Agenda

The Mississippi Human Services Agenda (Agenda) was incorporated in 1989 as a private, non-profit organization

dedicated to using research and advocacy in the struggle against discrimination and poverty. In the struggle for equity and justice, the Agenda has fought for the rights of women and children, for poor people, for people of color, for persons with disabilities, and for those who are marginalized in our society. It has assisted in legislative as well as legal efforts to ensure the rights of persons that the popular culture dismisses.

National Association of Social Workers, Inc.

The National Association of Social Workers, Inc. (NASW) is the largest association of professional social workers in the world with over 155,000 members in 55 chapters throughout the United States and abroad. Founded in 1955 from a merger of seven predecessor social work organizations, NASW is committed to improving the quality of life through utilization of social work knowledge and skills, promoting the quality and effectiveness of social work practice, and advancing the knowledge base of the social work profession. In its policy on Aid to Families with Dependent Children, NASW supports the principle that a nationwide system to enforce child support payments is essential to help ensure that children receive adequate and regular economic support that is fundamental to their security and development.

National Council of Jewish Women, Inc.

The National Council of Jewish Women, Inc. (NCJW), is a volunteer organization, inspired by Jewish values, that works through a program of research, education, advocacy, and community service to improve the quality of life for women, children, and families and strives to ensure individual rights and freedoms for all. Founded in 1893, NCJW has 90,000 members in over 500 communities around the country. Based on NCJW's *National Resolutions*, which support "policies and programs which provide an adequate level of services and income that meet basic human needs while encouraging self sufficiency," NCJW joins this brief.

National Legal Aid and Defender Association

The National Legal Aid and Defender Association (NLADA) is the largest national organization devoting all of its resources to ensuring equal access to the justice system for all poor people. Many of NLADA's member programs represent indigent women who could be helped in providing food, shelter, health care, and other basic necessities of life for their families through an appropriately managed child support enforcement program. It is also important to the members of NLADA that individuals be able to enforce their federal rights through judicial action.

National Women's Law Center

The National Women's Law Center (Center) is a non-profit organization that has been working since 1972 to advance and protect women's legal rights. The Center focuses on major policy areas of importance to women and their families, including family support, income security, employment, education, and reproductive rights and health—with special attention to the needs of low-income women. The Center has been a leader in advocating for a strong federal-state child support enforcement program and has actively monitored Congressional efforts to improve the program. The Center has participated as counsel, provided assistance, or participated as *amicus curiae* in a range of cases interpreting the requirements of a host of public benefit programs, including the child support enforcement program, and has a strong interest in ensuring that individuals eligible for child support enforcement services are able to enforce their right to obtain these services.

Northwest Women's Law Center

The Northwest Women's Law Center (Law Center) is a non-profit, public interest organization dedicated to protecting the legal rights of women through litigation, education, legislation, and the provision of legal information and referral services. The Law Center provides these services to women throughout Washington state and the Pacific Northwest. The Law Center has worked to improve child support laws and their enforcement both through direct representation and through joining numerous *amicus curiae* briefs. In a recent case, the Law Center represented a number of custodial parents in a class action seeking to require the Washington State Office of Support Enforcement to calculate and collect interest on delinquent child support payments. On the legislative front, the Law Center actively worked to achieve enactment of Washington's state-wide child support schedule and has since worked to preserve the schedule. Most recently, the Law Center has been involved in legislative efforts supporting the suspension of driver's and professional licenses for failure to pay child support.

NOW Legal Defense and Education Fund

NOW Legal Defense and Education Fund (NOW LDEF) is a national, non-profit civil rights organization that performs a broad range of legal and educational services in support of women's efforts to eliminate sex-based discrimination and secure equal rights. NOW LDEF was founded in 1970 by leaders of the National Organization for Women. Among NOW LDEF's major priorities is securing economic justice for all women. In furtherance of that goal, NOW LDEF has litigated or appeared as *amicus curiae* in a variety of cases involving women's rights to public benefits, including cases to improve provision of child support services to poor women such as *Barnes v. Anderson*, 980 F.2d 572 (9th Cir. 1992), and *Collazo v. Bane*, 92 Civ. 5468 (E.D.N.Y. July 2, 1996).

Paternal Involvement Project

The Paternal Involvement Project (PIP) is a public-private venture in Chicago that seeks to help non-custodial fathers of children on welfare become more involved

financially and emotionally with their children. Since its inception as a demonstration project in 1993, the Project has provided a mix of education, jobs, parenting, and case management services to low-income, minority (mostly African-American) men who want to become more involved fathers. The Project also seeks to ensure that federal and state public policies encourage fathers' efforts to support and be involved with their children.

Planned Parenthood Federation of America, Inc.

Planned Parenthood Federation of America, Inc., is the world's oldest and largest voluntary family planning organization. Planned Parenthood believes that everyone has the right to choose when or whether to have a child—and that every child should be wanted and loved. Planned Parenthood affiliates operate nearly 1,000 health centers nationwide. They provide medical services and sexuality education for millions of women, men, and teenagers each year. Planned Parenthood believes that child support is essential for women raising children and that the assurance of such support underlies women's ability to make voluntary childbearing decisions.

Reform Organization of Welfare

Reform Organization of Welfare (ROWEL) is a 1,000-member statewide organization in Missouri of people in poverty and their allies working to reduce poverty and prejudice. Formed in 1972 by a coalition of people of faith concerned about poverty and the welfare system, two-thirds of ROWEL's Board members are people in poverty, including AFDC recipients, persons with disabilities, and low-wage workers. Many of ROWEL's members would not need public assistance if their children's father were paying his fair share. Other members who are fathers have experienced negative consequences from the slow pace of winning adjustments to child support orders when their incomes declined. ROWEL has an important interest in improving the administration of Missouri's child support enforcement program.

Society of American Law Teachers

With almost 800 members at over 140 law schools, the Society of American Law Teachers (SALT) is the largest individual membership organization of people who teach in American law schools. Since its inception in 1974, SALT has addressed issues of access to justice and discrimination in many areas of American life.

Women Employed

Women Employed is a national membership organization of working women, based in Chicago, with a membership of 2000. Since 1973, the organization has assisted thousands of working women with problems of sex discrimination. Women Employed works to empower women to improve their economic status and to remove barriers to economic equity through advocacy, direct service, and public education. Women Employed strongly believes that for women trying to gain or maintain economic self-sufficiency, the child support to which they are entitled is a vital portion of their income. Their right to sue to force states to carry out their child support enforcement obligation is crucial to their ability to collect this support and help them move towards self-sufficiency.

Women's Law Project

The Women's Law Project (Law Project) is a Philadelphia-based, non-profit, public interest legal center, dedicated to improving the legal and economic status of women and their families through litigation, public policy development, and public education. Since its founding in 1974, family law, and in particular the economic rights of women and childen upon divorce, has been a major focus of the work of the Law Project. The Law Project has brought litigation on family law issues, including *Bonds v. Snider*, a lawsuit against the Pennsylvania Department of Public Welfare for its failure to insure that the Philadelphia Family Court offers all federally mandated child support services in intercounty and interstate

cases. The Law Project also operated the Philadelphia Child Support Project, a comprehensive effort to increase the number of Philadelphia children who receive adequate and consistent child support from absent parents. Based on its substantial work in the area of child support, the Law Project believes that the right of families to sue to enforce states' obligations under Title IV-D is critical to protecting their right to child support enforcement services.

Women's Legal Defense Fund

Founded in 1971, the Women's Legal Defense Fund (WLDF) is a national advocacy organization that develops and promotes public policies to help women achieve equal opportunity, quality health care, and economic security for themselves and their families. WLDF has worked for more than a decade at the national, state, and local levels to reform the nation's child support system by preparing materials for public education, providing technical assistance to federal and state policymakers and advocates, conducting research, and participating as *amicus curiae* in child support cases in state and federal courts.

Women's Rights Litigation Clinic

A permanent part of Rutgers Law School-Newark since 1973, the Women's Rights Litigation Clinic (Clinic) is devoted to eliminating sex discrimination and furthering the rights of women. Clinic students, under faculty direction, pursue legal remedies for the gender injustice that pervades our society in courts, legislatures, and administrative bodies. An important concern is the well being of divorced women and the children within their charge. The Clinic is also concerned with the need for access to the courts to remedy the injustices women suffer.